

REMARKS

Applicants wish to thank Examiner Gilbert for the courtesies extended to applicants' representatives during the telephone interview on October 18, 2007, during which time the Examiner and applicants' representatives discussed the features of the claims in light of the outstanding Office action and the applied references. Applicants have amended independent claim 14 in the manner discussed with the Examiner, which the Examiner agreed distinguishes claim 14 over the Hochman reference, and have amended independent claims 8, 46, 62, 67, and 68 in accordance with the Examiner's suggestions to more particularly recite the response data indicative of concordance of the response of the patient, and that the concordance response data is input separately from the pain level data at the time related to the time of the fluid introduction data. Having amended independent claims 8, 14, 46, 62, 67, and 68 in accordance with the Examiner's suggestions, applicants respectfully request withdrawal of the rejections and submit that all claims are in condition for allowance.

Although Applicants are filing this response on October 23, 2007 in order to avoid any extension of time fees, if, upon review of the amendments and response herein, the Examiner feels that a subsequent discussion will assist in expediting allowance of the instant application, Applicants remain available to discuss the application with the Examiner.

Claims 8-15, 17-18, 38-58, and 62-68 are pending, with claims 8, 14, 46, 62, 67, and 68 being independent. Claims 42-43, 51, and 53 have been withdrawn by the Examiner. Claims 8, 14, 46, 62, 67, and 68 have been amended, and claims 59-61 have been canceled herein, without prejudice. Applicants respectfully submit that all pending claims are in condition for allowance for at least the following reasons.

Claim Rejections Under 35 U.S.C. 102

The Examiner has rejected claims 8-13, 41, 44-47, 52, and 67-68 as anticipated by U.S. Patent No. 6,370,420 to Kraft ("Kraft"). Claims 8, 46, 67, and 68 are independent.

Independent claims 8, 46, 67, and 68 recite a computer readable medium having code for receiving concordance response data, input separately from pain level data, the concordance

response data indicating whether the pain level response of the patient is a result of a pain symptom or is a result of pain unrelated to the pain symptom. As discussed with the Examiner during the October 18 interview, Kraft fails to disclose or suggest these features.

The Examiner has rejected claims 14-15, 17-18, and 55-58 as anticipated by U.S. Patent No. 6,945,954 to Hochman et al. ("Hochman"). Claim 14 is independent.

Independent claim 14 recites that the operator includes code to determine impedance data indicative of the flow-rate impedance based upon an actuation of the introducer prior to insertion of the introducer into the spine. As the Examiner agreed during the October 18 interview, Hochman fails to disclose or suggest this feature.

Claim Rejections Under 35 U.S.C. 103

The Examiner has rejected claims 38-40, 48-50, 54, 59-61, and 62-66 as being obvious over Kraft in view of U.S. Patent No. 6,258,042 to Factor et al. ("Factor").¹ Claim 62 is independent. As discussed with the Examiner, Factor fails to overcome the deficiencies discussed above with respect to Kraft in view of independent claim 8, from which claims 38-40 depend, independent claim 46, from which claims 48-50 and 54 depend, and independent claim 62, from which claims 63-66 depend. In particular, Factor fails to disclose or suggest concordance response data, input separately from pain level data, indicating whether the pain level response of the patient is a result of a pain symptom or is a result of pain unrelated to the pain symptom. The sliding device of Factor, at best, only provides an indication of the patient's pain level at the time of fluid introduction. For at least these reasons, claims 38-40, 48-50, 54, and 62-66 are patentable over Kraft in view of Factor.

Applicants do not acquiesce in the Examiner's characterizations of the art. For brevity and to advance prosecution, applicants may not have addressed all characterizations of the art and reserve the right to do so in further prosecution of this or a subsequent application. The

¹ The rejection of claims 59-61 over Kraft in view of Factor are rendered moot as a result of their cancellation, without prejudice, herein.

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Serial No. : 10/782,900
Filed : February 23, 2004
Page : 12 of 12


Attorney's Docket No.: 22416-015001 / PT-2654

absence of an explicit response by applicants to any of the Examiner's positions does not constitute a concession of the Examiner's positions. The fact that applicants' comments have focused on particular arguments does not constitute a concession that there are not other arguments for patentability of the claims. Applicants submit that all of the dependent claims are patentable for at least the reasons given with respect to the claims on which they depend.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

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